

Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SOUND ACTION, FRIENDS OF THE  
SAN JUANS, AND WASHINGTON  
ENVIRONMENTAL COUNCIL, )  
Plaintiffs, )  
v. )  
UNITED STATES ARMY CORPS OF  
ENGINEERS, )  
Defendant. )  
No. 18-cv-00733-JLR  
STIPULATED MOTION AND  
~~PROPOSED~~ ORDER DEFERRING  
FILING OF THE COMBINED JOINT  
STATUS REPORT AND DISCOVERY  
PLAN  
Note on Motions Calendar: November  
5, 2018

John

Plaintiffs Sound Action, et al. (“Sound Action”), and Defendant United States Army Corps of Engineers (the “Corps”) (collectively the “Parties”) request that the Court defer the date for the Parties to file the Combined Joint Status Report and Discovery Plan required by the Court’s order (Doc. No. 14), until 14 days after the Court rules on the Corps’ pending motion to dismiss claim one of the Complaint for lack of jurisdiction (Doc. No. 13). The grounds for this Stipulated Motion are as follows:

**STIPULATED MOTION AND [PROPOSED]  
ORDER EXTENDING TIME - 1**

David J. Kaplan,  
United States Department of Justice  
Environmental Defense Section  
P.O. Box 7611  
Washington D.C. 20044

Case No. 18-cv-00733-JLR

1       1. On May 21, 2018, Sound Action filed a two-count Complaint against the Corps  
2 under the Administrative Procedure Act that challenges an alleged final agency action by the  
3 Corps pertaining to the boundary of shoreline areas regulated under the Clean Water Act in the  
4 Corps' Seattle District and that alleges the Corps failed to respond within a reasonable time to an  
5 administrative petition regarding the Clean Water Act.  
6

7       2. On September 28, 2018, the Corps filed a Motion to Dismiss Claim One For Lack  
8 of Jurisdiction, Doc. No. 13. Briefing on this dispositive motion, which is noted for November  
9 15, 2018, is ongoing. Doc. No. 16.

10      3. The Court issued its initial scheduling order (Doc. No. 14) on October 2, 2018.  
11 That order requires, among other things, that the Parties file their Combined Joint Status Report  
12 and Discovery Plan by November 6, 2018. Deferring that filing until 14 days after the Court  
13 rules on the Corps' pending Motion to Dismiss makes sense because the scheduling issues that  
14 the Parties would need to address in that filing will depend upon, and will be significantly  
15 impacted by, how the Court rules on the Corps' Motion to Dismiss. Once that ruling is issued,  
16 the Parties will be in a position to address the scheduling matters in the Combined Joint Status  
17 Report and Discovery Plan for the efficient disposition of this case.  
18

19      4. Deferring filing of the Combined Joint Status Report and Discovery Plan will not  
20 delay the ultimate resolution of this case or a future trial date. The Parties agree that any judicial  
21 review on the merits in this case must be based upon an administrative record for judicial review;  
22 thus, depending upon how the Court rules on the Corps' pending Motion to Dismiss, any merits  
23 review of the claims would be appropriately resolved through motions for summary judgment.  
24 Accordingly, selecting a trial date will not be necessary in this case, and deferring the date for  
25  
26  
27

28      STIPULATED MOTION AND [PROPOSED]  
29 ORDER EXTENDING TIME - 2

Case No. 18-cv-00733-JLR

David J. Kaplan.  
United States Department of Justice.  
Environmental Defense Section  
P.O. Box 7611  
Washington D.C. 20044

1 filing the Status Report and Discovery Plan will not unduly delay the ultimate resolution of this  
2 case.

3 WHEREFORE, Sound Action and the Corps respectfully request that the Court extend  
4 the date for the Parties to file their Combined Joint Status Report and Discovery Plan required by  
5 the Court's initial order (Doc. No. 14) to 14 days after the Court rules on the Corps' pending  
6 Motion to Dismiss (Doc. No. 13).

8

9

10 ORDER

11

12

13 IT IS SO ORDERED, on this 6<sup>th</sup> day of November, 2018.

14  
15  
16 United States District Judge

17

18

19

20

21

22

23

24

25

26

27

28

29 STIPULATED MOTION AND [PROPOSED]  
ORDER EXTENDING TIME - 3

Case No. 18-cv-00733-JLR

David J. Kaplan.  
United States Department of Justice  
Environmental Defense Section  
P.O. Box 7611  
Washington D.C. 20044

1 Respectfully submitted by:

2 /S/ David J. Kaplan

3 David J. Kaplan

4 Attorneys for Federal Defendants

United States Department of Justice

Environmental Defense Section

5 P.O. Box 7611

Washington, DC 20044

6 (202) 514-0997

7 David.kaplan@usdoj.gov

8 /S/ Anna Sewell

9 Anna Sewell, WSBA # 48736

10 Earthjustice

11 1625 Massachusetts Avenue NW

12 Suite 702

13 Washington, DC 20036

202-667-4500

14 asewell@earthjustice.org

21  
22  
23  
24  
25  
26  
27  
28  
29 STIPULATED MOTION AND [PROPOSED]  
ORDER EXTENDING TIME - 4

Case No. 18-cv-00733-JLR

David J. Kaplan.  
United States Department of Justice  
Environmental Defense Section  
P.O. Box 7611  
Washington D.C. 20044

## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing filing was electronically filed with the Clerk of the Court on November 5, 2018, using the Court's electronic filing system, which will send notification of said filing to the attorneys of record that have, as required, registered with the Court's system.

/S/ David Kaplan

**STIPULATED MOTION AND [PROPOSED]  
ORDER EXTENDING TIME - 5**

Case No. 18-cv-00733-JLR

David J. Kaplan,  
United States Department of Justice  
Environmental Defense Section  
P.O. Box 7611  
Washington D.C. 20044